

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
TDD Line (303) 691-7700  
Located in Glendale, Colorado

Laboratory Services Division  
8100 Lowry Blvd.  
Denver, Colorado 80230-6928  
(303) 692-3090

<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

May 20, 2008

Mr. Alan Pogue  
Icenogle, Norton & Seter, PC  
1331 17<sup>th</sup> St., Suite 500  
Denver, CO 80202

**Certified Mail Number: 7005 1820 0000 3212 1618**

**RE: Compliance Order on Consent, Number: SC-080520-1**

Dear Mr. Pogue:

Enclosed for your records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period. If the Division receives any comments during this period we will contact your office to discuss. Also please be advised that the first page of the Order was changed in order to place the correct Order Number on the final document.

If you have any questions, please don't hesitate to contact Mike Harris at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Karen Tidwell, Legal Assistant  
Water Quality Protection Section  
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment

ec: Aaron Urdiales, EPA Region VIII  
Cary Pilon, Engineering Section, CDPHE  
Kathy Dolan, Stormwater Program Contact  
Dick Parachini, Outreach and Assistance Unit, CDPHE  
Gary Beers, Permits Section, CDPHE

Enclosure(s)

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Colorado Department  
of Public Health  
and Environment

May 20, 2008

Mr. Mark Kennedy  
ERS Constructors  
15427 E. Fremont Dr.  
Centennial, CO 80112

Certified Mail Number: 7005 1820 0000 3212 1625

**RE: Compliance Order on Consent, Number: SC-080520-1**

Dear Mr. Kennedy:

Enclosed for your records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period. If the Division receives any comments during this period we will contact your office to discuss. Also please be advised that the first page of the Order was changed in order to place the correct Order Number on the final document.

If you have any questions, please don't hesitate to contact Mike Harris at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Karen Tidwell, Legal Assistant  
Water Quality Protection Section  
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment

ec: Aaron Urdiales, EPA Region VIII  
Cary Pilon, Engineering Section, CDPHE  
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Enclosure(s)



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-080520-1**

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**IN THE MATTER OF:   CENTERRA PROPERTIES WEST, LLC &  
                                  TIC – THE INDUSTRIAL COMPANY d/b/a  
                                  ERS CONSTRUCTORS – PIPELINE DIVISION OF TIC  
                                  CDPS PERMIT NO. COR-030000  
                                  CERTIFICATION NO. COR-036582  
                                  LARIMER COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act (“the Act”) §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Centerra Properties West, LLC (“CPW”) and TIC – The Industrial Company (“TIC”). The Division, CPW and TIC may be referred to collectively as “the Parties.”

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-060519-2) that the Division issued to TIC on May 19, 2006.

**DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §25-8-602 and 605, C.R.S., the Division has made the following determinations regarding violations of the Act and/or a permit by CPW and TIC.
3. At all times relevant to the violations cited herein, CPW was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. CPW is a “person” as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. At all times relevant to the violations cited herein, TIC was a Delaware corporation in good standing and registered to conduct business in the State of Colorado.
6. On February 19, 1998, TIC registered the trade name “ERS Constructors – Pipeline Division of TIC” with the Colorado Secretary of State.
7. TIC is a “person” as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
8. CPW, as the land owner, and TIC, as a construction contractor, were involved in ground disturbing construction activities on one hundred ninety-nine (199) acres of land located at or near Interstate 25 and U.S. Highway 34, in or near the City of Loveland, Larimer County, Colorado (the “Project”).
9. On October 4, 2004, the Division received a Notice of Transfer and Acceptance of Terms of a Stormwater Discharge General Permit Certification (“Notice of Transfer”) from TIC. The Notice of Transfer requested that Project coverage under the Colorado Discharge Permit System (“CDPS”) General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the “Permit”) be transferred from CPW to ERS Constructors – Pipeline Division of TIC.
10. On October 4, 2004, the Division transferred coverage under the Permit, including Certification Number COR-036582, to ERS Constructors – Pipeline Division of TIC, authorizing TIC to discharge stormwater from the construction activities associated with the Project to the South Platte River under the terms and conditions of the Permit.
11. The South Platte River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).
12. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.
13. On June 1, 2005, a representative from the Division (the “Inspector”) conducted an on-site inspection of the Project, pursuant to the Division's authority under §25-8-306, C.R.S., to determine TIC's, and therefore CPW's, compliance with the Water Quality Control Act and the Permit.
14. On January 25, 2006, the Division was notified that construction activities at the Project were completed and final stabilization had been achieved. Thus, Certification Number COR-036582 was inactivated.

**Failure to Implement and/or Maintain  
Best Management Practices to Protect Stormwater Runoff**

15. Pursuant to Part I. B. 3. a. (1) of the Permit, TIC, and therefore CPW, were required to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

16. Pursuant to Part I. B. 3. a. (2) of the Permit, TIC, and therefore CPW, were required to implement interim and permanent stabilization practices at the Project, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure that existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, and preservation of mature vegetation.
17. Pursuant to Part I. C. 1. b. of the Permit, TIC, and therefore CPW, were required to prevent concrete wash water from discharging to state waters or to storm sewer systems.
18. The Division has determined that CPW and TIC failed to implement and/or maintain adequate Best Management Practices (“BMPs”) at the Project, as described below in paragraphs 18 (a-g):
  - a. During the June 1, 2005 inspection, the Inspector observed a storm drain inlet on the roadway at the Project. *(Note: The inlet was identified by Pictures 1 and 2 in the Division’s June 29, 2005 inspection report that was sent to ERS Constructors.)* A rock sock was in place to protect the inlet, however the rock sock had been damaged and was spilling aggregate into the storm drain inlet. Thus, the rock sock was not acting as a functional BMP to prevent discharges of pollutants to the storm sewer. No other BMPs were observed in place to stabilize the disturbed soils surrounding the inlet or to prevent sediment from discharging to the storm sewer, as required in the Permit.
  - b. During the June 1, 2005 inspection, the Inspector observed disturbed land surrounding the canal at the Project. No BMPs were observed in place to stabilize the disturbed soils, including the canal banks, and no BMPs were in place to prevent sediment from discharging to the canal during storm events.
  - c. During the June 1, 2005 inspection, the Inspector observed a drainage swale at the Project that discharges stormwater to an adjacent waterway. No BMPs were in place to prevent erosion of the drainage swale, no BMPs were observed in place to prevent sediment from discharging to the waterway, and no BMPs were in place to stabilize the disturbed lands surrounding the swale.
  - d. During the June 1, 2005 inspection, the Inspector observed trash and waste materials that were being stored directly adjacent to the canal at the Project. No BMPs were observed in place to prevent stormwater runoff from discharging across the waste storage area and into the canal.
  - e. During the June 1, 2005 inspection, the Inspector observed masonry wash and waste material that had been discharged to the banks of the canal. No BMPs were in place to prevent the masonry material from discharging into the canal during storm events.
  - f. During the June 1, 2005 inspection, the Inspector observed a storm drain inlet on the bridge structure at the Project. A hay bale was in place to protect the inlet, however a sizeable gap was observed between the bale and the inlet opening. Thus, the hay bale was not acting as a functional BMP to prevent pollutant discharges to the storm sewer. No other BMPs were observed in place to stabilize the muddy, disturbed soils surrounding the inlet or to prevent sediment from discharging to the storm sewer, as required in the Permit.

- g. During the June 1, 2005 inspection, the Inspector observed permanent flood control ponds at the Project. The ponds were filled with sediment and were not being cleaned out to maintain optimal detention capacity. Thus, the ponds were not functioning as effective construction BMPs. Additionally, the disturbed lands surrounding the ponds were not stabilized and no additional BMPs were in place to prevent sediment from discharging from the ponds.
- 19. On August 2, 2005, a representative from the City of Loveland performed an inspection of the Project and identified several violations of the Permit, including many of the same violations identified during the Division's June 1, 2005 inspection and outlined in paragraph 17 above.
- 20. On August 12, 2005, the Division received photographs from CPW and TIC, in response to the Division's June 1, 2005 inspection, which documented the conditions at the Project on August 10, 2005. The photographs revealed ongoing deficiencies in the implementation of BMPs at the Project and CPW's and TIC's understanding of effective stormwater management, which is achieved through a system of controls and not solely with the implementation of BMPs at the point of discharge.
- 21. CPW's and TIC's failures to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitute violations of Part I. B. 3. a. and Part I. C. 1. b. of the Permit.

### **ORDER AND AGREEMENT**

- 22. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605 C.R.S., and in satisfaction of the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-060519-2), the Division orders CPW and TIC to comply with all provisions of this Consent Order applicable to each, including all requirements set forth below.
- 23. CPW and TIC agree to the terms and conditions of this Consent Order. CPW and TIC agree that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. CPW and TIC also agree not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by CPW or TIC against the Division:
  - a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
- 24. Notwithstanding the above, CPW and TIC do not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by CPW and TIC pursuant to this Consent Order shall not constitute evidence of fault by CPW and TIC with respect to the conditions of the Project.

### **Compliance Requirements**

25. CPW shall retain the services of a qualified entity and conduct monthly stormwater management system audits at the Centerra development located in or near the City of Loveland. The monthly audits shall take place at all commercial construction projects that are within the boundaries of Centerra Metropolitan Districts 1, 2 and 4, as further identified in Attachment A, and shall be performed for a period of at least one calendar year unless: (1) final stabilization is achieved as defined in the permit; or (2) an individual commercial construction project is sold to a new owner and is no longer under the ownership or control of CPW or Centerra Metropolitan District 1, 2 or 4.
26. Each calendar quarter, CPW shall submit a written statement to the Division certifying that all monthly stormwater management system audits described in paragraph 25 above have been completed and that any and all deficiencies identified during the audits have been corrected as soon as possible, immediately in most cases. Additionally, by June 30, 2009, CPW shall submit a final report to the Division summarizing the findings of the audits as a whole, including any strengths and weaknesses that were identified in CPW's stormwater management program through the performance of the audits, and an explanation of how those strengths and/or weaknesses may affect the stormwater management techniques planned and implemented by CPW's ownership group on future Colorado construction projects.
27. Any person submitting statements or reports on behalf of CPW pursuant to paragraph 26 above shall make the following certification with each submittal:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

28. In addition to all other funds necessary to comply with the requirements of this Consent Order, CPW and TIC shall together pay the combined amount of Seventy Thousand Dollars (\$70,000.00) in the form of civil penalties and expenditures on a Supplemental Environmental Project (“SEP”) in order to achieve settlement of this matter.
29. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, CPW and TIC shall together pay Twenty Thousand Eight Hundred Dollars (\$20,800.00) in civil penalties, with TIC paying Twenty Thousand Dollars (\$20,000) in civil penalties and CPW paying Eight Hundred Dollars (\$800.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Twenty Thousand Eight Hundred Dollar (\$20,800.00) civil penalty for the above violation(s) and CPW and TIC agree to make their respective payments within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the “Colorado Department of Public Health and Environment,” and delivered to:

Michael Harris  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

30. CPW shall also perform the SEP identified below, which the Parties agree is intended to secure significant environmental or public health protection and improvements. CPW's total expenditure for the SEP shall be not less than Forty Nine Thousand Two Hundred Dollars (\$49,200.00).
31. CPW shall donate Forty Nine Thousand Two Hundred Dollars (\$49,200.00) to High Plains Environmental Center. The funds will be used for an environmental restoration project involving the re-establishment of native vegetation in the area of the High Plains Environmental Center to provide shelter and forage for wildlife and stabilization of soils from wind and water erosion, as further described in Attachment B. CPW shall make the payment of Forty Nine Thousand Two Hundred Dollars (\$49,200.00) and shall include with the donation a cover letter identifying the monies for the above-described project within thirty (30) days of the effective date of this Consent Order. CPW shall provide the Division with a copy of the cover letter and check within thirty (30) calendar days of the effective date of this Consent Order. CPW shall not deduct the payment of the SEP donation provided for in this paragraph for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
32. CPW hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. CPW further certifies that it has not received, nor will receive, credit in any other enforcement action for the SEP. In the event that CPW has or will receive credit under any other legal obligation for the SEP, CPW shall pay Forty Nine Thousand Two Hundred Dollars (\$49,200.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 29 above.
33. The SEP must be fully implemented and completed to the satisfaction of the Division, by June 30, 2009. In the event that CPW fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, CPW shall be liable for payment of a penalty in the amount of Forty Nine Thousand Two Hundred Dollars (\$49,200.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP. CPW shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 29 above.
34. CPW shall submit a SEP Completion Report to the Division by June 30, 2009. The SEP Completion Report shall contain the following information:
  - a. A detailed description of the SEP as implemented;
  - b. A description of any operating problems encountered and the solutions thereto;
  - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
  - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).



35. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
36. CPW shall include the following language in any public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

### **SCOPE AND EFFECT OF CONSENT ORDER**

37. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations alleged herein and in the May 19, 2006 Notice of Violation / Cease and Desist Order (Number: SO-060519-2).
38. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy", which includes a thirty-day public comment period. The Division, CPW and TIC each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
39. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty. Any violation of the provisions of this Consent Order by CPW and/or TIC, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
40. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
41. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
42. Notwithstanding paragraph 24 above, the violations described in this Consent Order will constitute part of CPW's and TIC's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against CPW and/or TIC. CPW and TIC agree not to challenge the use of the cited violations for any such purpose.
43. This Consent Order does not relieve CPW and/or TIC from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

## **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

44. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein and in the May 19, 2006 Notice of Violation / Cease and Desist Order (Number: SO-060519-2). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
45. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
46. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
47. Upon the effective date of this Consent Order, CPW and TIC release and covenant not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
48. CPW and TIC shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of CPW and/or TIC, or those acting for or on behalf of CPW and/or TIC, including either entity's officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. CPW and TIC shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by CPW and TIC in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

## **NOTICES**

49. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CADM-B2  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3598  
E-mail: michael.harris@state.co.us

For CPW:

Alan Pogue  
Icenogle, Norton and Seter, PC  
1331 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202

For TIC:

Mark Kennedy  
ERS Constructors  
15427 East Fremont Drive  
Centennial, Colorado 80112

### **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

50. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by CPW of corrective actions carefully designed to prevent ongoing or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. CPW agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for CPW to achieve and maintain compliance with State law.

### **MODIFICATIONS**

51. This Consent Order may be modified only upon mutual written agreement of the Parties.

### **NOTICE OF EFFECTIVE DATE**

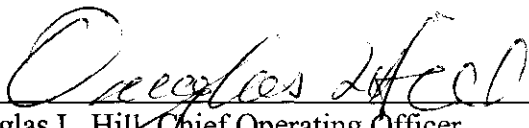
52. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

### **BINDING EFFECT AND AUTHORIZATION TO SIGN**

53. This Consent Order is binding upon CPW and TIC and each entity's corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. CPW and TIC agree to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's


signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR CENTERRA PROPERTIES WEST, LLC, a Colorado Limited Liability Company  
By McWhinney Real Estate Services, Inc., a Colorado Corporation, Manager:**

*ads*  
  
\_\_\_\_\_  
Douglas L. Hill, Chief Operating Officer

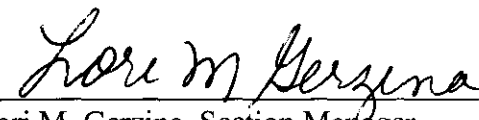
Date: 5-1-08

**FOR TIC – THE INDUSTRIAL COMPANY:**

  
\_\_\_\_\_  
Mark Kennedy, Vice President

Date: 4/28/08

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**

  
\_\_\_\_\_  
Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION

Date: 5/20/08